IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 450.

THE UNITED STATES, *Appellant*,

v.

BENJAMIN F. JONES, JR., as Sole Administrator of the Estate of Adelaide P. Dalzell, Deceased.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

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Counsel for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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STATEMENT.

The moneys for the recovery of which this suit was instituted were paid as legacy taxes, alleged by the Collector of Internal Revenue at Pittsburgh, Pennsylvania, to be due under sections 29 and 30 of the act commonly known as the "Spanish War Revenue Law," approved June 13, 1898 (30 Stat. L., 448, 464, Chap. 448), as amended by act approved March 2, 1901, which took effect July 1, 1901 (31 Stat. L., 938, 946, Chap. 806).

The portions of sections 29 and 30 material to the case are given below, the amendments by the act of March 2, 1901, are indicated by italics.

"Sec. 29. That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

* * * * * * *

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguin-

ity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided,* That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person died possessed, as aforesaid, shall be exempt from tax or duty.

* * * * * * *

Provided, That nothing in this section shall be construed to apply to bequests or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or to legacies or bequests to societies for the prevention of cruelty to children, including all bequests or legacies of such character on which the tax imposed had not been paid or collected on the first day of March, nineteen hundred and one. And provided further, That the provisions of this Act and of the Act hereby amended shall not be held to apply to any estate where the testator or intestate died before June thirteenth, eighteen hundred and ninety-eight.

Sec. 30. That the tax or duty aforesaid *shall be due and payable in one year after the death of the testator and* shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee *having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof, in writing, to the collector or deputy collector of the district*

where the deceased grantor or bargainer last resided within thirty days after he shall have taken charge of such trust, and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, *or in which the property was located in case of nonresidents,* the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, * * *.

* * * * * * *

Any tax paid under the provisions of sections twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged."

Section 29 as amended was repealed to take effect on July 1, 1902, by act approved April 12, 1902 (32 Stat. L., 96, 97, Chap. 500). The eighth section of which is as follows:

"That all taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this Act, shall be subject, as to lien, charge, collec-

tion, and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows:

* * * * * * *

The material portions of the thirtieth section have been heretofore given.

On June 27, 1902, the President approved an Act entitled: "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes" (32 Stat. L., 406, Chap. 1160), which is as follows:

"That the Secretary of the Treasury, under appropriate rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the corporations, associations, societies, or individuals as trustees or executors, such sums of money as have been paid by them as taxes upon bequests, or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, under the provisions of section twenty-nine of the Act entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' approved June thirteenth, eighteen hundred and ninety-eight.

Sec. 2. That the Secretary of the Treasury, under rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, sums paid for documentary stamps used on export bills of lading, such stamps representing taxes which were illegally assessed and collected.

Sec. 3. That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the Act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commisioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two.

Sec. 4. That taxes which shall have accrued before the taking effect of the Act of April twelfth, nineteen hundred and two, entitled, 'An Act to repeal war-revenue taxation, and for other

purposes,' and since July first, nineteen hundred, upon securities delivered or transferred to secure the future payment of money are hereby remitted."

It is upon the third section of the above act that this suit is predicated.

Adelaide P. Dalzell died in Pittsburgh, Pennsylvania, on June 28, 1902, intestate, and her sole next of kin surviving her were two daughters. (Finding II, Rec. 6.) Appellee was duly appointed administrator of Mrs. Dalzell's estate by the Orphans' Court in said city on July 14, 1902, and duly qualified as such. (Finding II, Rec., 7.) Mrs. Dalzell left personal property of the gross value of $226,115.29. There were debts due by the estate aggregating $6,773.55, which appellee as administrator paid on various dates subsequent to his appointment. (Finding IV, Rec. 7.)

Under the laws in force in the State of Pennsylvania the daughters of Mrs. Dalzell were not entitled as next of kin to receive in possession or enjoyment any part of the personal estate of their mother until many months after July 1, 1902. (Findings II and III, Rec. 7.)

The value of the net personal estate remaining in appellee's hands as administrator after the payment of the debts and expenses was $219,341.74, and the same, less the sum of $3,290.12, paid the United States, as hereinafter set forth, was by appellee equally divided between Mrs. Dalzell's two daughters on May 4, 1903, such division being pursuant to an account filed by appellee and duly approved by

said Orphans' Court. (Finding IV, Rec. 7 and 8.)

On October 24, 1905, appellee paid to the United States' Collector of Internal Revenue at Pittsburgh, Pennsylvania, without protest, $3,290.12, which said Collector alleged to be due as an inheritance tax under the act of June 13, 1898, as aforesaid, on account of the interest of Mrs. Dalzell's two daughters in their mother's estate. (Finding V, Rec. 8.)

Seven months after paying said tax, viz., on May 24, 1906, appellee filed an application to have such moneys returned to him, which application the Secretary of the Treasury held for over two years without action thereon. On November 21, 1908, the Secretary rejected appellee's application as aforesaid. (Finding VI, Rec., 8, 9.) On November 23, 1908, appellee filed his original petition in the Court of Claims and on January 24, 1912, his amended petition was filed. (Rec., 1.) On February 8, 1912, defendant's counsel interposed a general demurrer on their behalf, which was argued on February 26, 1912. (Rec., 5 and 6.) On February 3, 1913, the demurrer was overruled in an opinion by Judge Howry. (Rec., 6.) On April 28, 1913, the court entered an order setting aside the aforesaid judgment overruling defendants's demurrer, withdrawing the opinion and remanding the cause to the general docket. (Rec., 6.) On November 12, 1913, the case was argued before the Court of Claims, and on March 23, 1914, that court entered Findings of Facts, rendered an opinion and judgment in favor of appellee for $3,290.12 (Rec., 6, 7, 9 and 13). On April 6, 1914, the appeal of defendants from the judgment was allowed by the Court of Claims. (Rec., 13.)

OUTLINE OF ARGUMENT.

I. The Court Has Jurisdiction (p. 10).

II. The Moneys Paid by Claimant as Taxes Upon the Distributive Shares of the Estate of Adelaide P. Dalzell are Refundable Under the Terms of and Directions Contained in the Refunding Act of June 27, 1902 (p. 10).

(a) *Under the terms of the taxing statute, amendments thereof, the repealing act and the refunding act, as construed by this and other federal courts, the criterion of liability for taxation of legacies and distributive shares of estates of persons who died during the period the taxing statute and amendments were in force, was whether such beneficial interests were, during that time, absolutely vested in possession or enjoyment of the legatees or next of kin. In the absence of such possession or enjoyment all taxes collected upon such beneficial interests are directed to be returned by the refunding act* (p. 10).

(b) *The distributive shares of this estate were not "absolutely vested in possession or enjoyment" of the distributees prior to July 1, 1902; and hence the taxes collected thereon are refundable* (p. 30).

(c) *An examination of the history of the times discloses a fixed purpose on the part of Congress to prohibit the collection of taxes upon all interests unless the right of absolute possession or enjoyment existed prior to July 1, 1902, and if collected to direct their refundment* (p. 51).

I.

The Court Has Jurisdiction.

It has been heretofore determined that the court has jurisdiction of cases arising under the refunding act of June 27, 1902, upon which this case is predicated. *Fidelity Trust Co. v. United States,* 45 Ct. Cls., 362; 222 U. S., 158.

II.

The Moneys Paid by Claimant as Taxes Upon the Distributive Shares of the Estate of Adelaide P. Dalzell Are Refundable Under the Terms of and Directions Contained in the Refunding Act of June 27, 1902.

(a) *Under the terms of the taxing statute, amendments thereof, the repealing act and the refunding act, as construed by this and other federal courts, the criterion of liability for taxation of legacies and distributive shares of estates of persons who died during the period the taxing statute and amendments were in force, was whether such beneficial interests were, during that time, absolutely vested in possession or enjoyment of the legatees or next of kin. In the absence of such possession or enjoyment all taxes collected upon such beneficial interests are directed to be returned by the refunding act.*

The carefully considered opinion of this court in the case of *Knowlton v. Moore,* 178 U. S., 41, while dealing with the constitutionality of the taxing statute and with the subject upon which the tax was levied, does not treat directly of the issue involved in the instant case. It is the leading case of *Vanderbilt v. Eidman,* 196 U. S., 480, with which we are more intimately concerned for it is upon the interpretation of the pertinent statutes in the opinion in that case that appellee primarily relies.

Under the terms of the will of Cornelius Vanderbilt, who died in September, 1899, his son, Alfred G., who was at the time twenty-two years of age, was entitled to receive the income from the entire residuary estate until he arrived at the age of thirty years, when he was to be put into possession of one-half of the corpus thereof; the income from the remaining one-half to be paid to him until he attained the age of thirty-five years, when he was to receive the balance of the corpus.

A tax was paid upon the right of Alfred G. Vanderbilt to the beneficial enjoyment of the income from the personal estate, to which no objection was interposed. The difficulty arose in respect of the subsequent taxation of the right possessed by Alfred G. Vanderbilt to succeed to the whole residuary personal estate provided he lived to the ages of 30 and 35, respectively. The Commissioner of Internal Revenue had concluded from the provisions of the amendatory act of March 2, 1901 (31 Stat. L., 938, 946, Chap. 806), that such a tax was due.

The case was on a certificate from the United States Circuit Court of Appeals for the Second Circuit, which presented four questions of which but one, the third, was answered. The third question is as follows:

> "Did §§ 29 and 30 of said act authorize the assessment and collection of a tax with respect to any of the rights or interests of Alfred G. Vanderbilt as a residuary legatee of the personal estate of Cornelius Vanderbilt under the seventeenth clause of the will, with the exception of his present right to receive the income of such estate until he attains the age of thirty years, prior to the time when, if ever, such rights or interests shall become absolutely vested in possession or enjoyment?"

The question was answered in the negative.

In reference to the issue involved the present Chief Justice, in speaking for the court, said:

> "While the questions, apparently, present distinct matters, yet underlying and involved in them all is the fundamental consideration whether the burden imposed by the war revenue act was confined to the interest of which Alfred G. Vanderbilt had the beneficial right of immediate enjoyment, or whether that burden also bore upon the right to the residue which Alfred G. Vanderbilt might possess or enjoy in the future, if he lived to the ages specified in the will, upon the theory that the right so to possess or enjoy in the future was technically vested." 196 U. S., 489.

The gist of the opinion may be said to be contained in the following (italics added):

> "It will be observed that the duties imposed in § 29 have relation to two classes, first, legacies or distributive shares passing by death and arising from personal property; and, second any personal property or interest therein transferred by deed, grant, bargain, sale or gift, to take effect in possession or enjoyment after the death of the grantor or bargainer, in favor of any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise. As to this second class, the statute specifically makes the liability for taxation depend, *not upon the mere vesting in a technical sense of title to the gift, but upon the actual possession or enjoyment thereof.* By any fair construction the limitation as to possession or enjoyment expressed as to one class must be applied to the other, unless it be found that the statute, whilst treating the two as one and the same for the purpose of the imposition of the death duty, has yet subjected them to different rules. A consideration of the subsequent provisions of the section leaves no room for such a contention, * * *."
>
> *Ibid.*, 491-4.

Again:

> "In view of the express provisions of the statute as to possession or enjoyment and beneficial interest and clear value, and of the absence of any express language exhibiting an intention to tax a mere technically vested interest in a case

> where the right to possession or enjoyment was subordinated to an uncertain contingency, it would, we think, be doing violence to the statute to construe it as taxing such an interest before the period when possession or enjoyment had attached."
>
> *Ibid.*, 495.

That the court did not restrict the requirement of actual possession or enjoyment to testate cases is shown by the following (italics added):

> "The amendments, therefore, did not, in our opinion, justify the construction that Congress intended by adopting them to cause death duties to become due within one year as to legacies and *distributive shares* which were not capable of being immediately possessed or enjoyed, and were therefore not subject to taxation under the original act."
>
> *Ibid.*, 498.:

Again:

> "Concluding, as we do, that there was no authority under the Act of 1898 for taxing the interest of Alfred G. Vanderbilt, given him by the residuary clause of the will, conditioned upon his attaining the ages of thirty and thirty-five years, respectively, it is unnecessary to determine whether such interest was technically a vested remainder, as claimed by counsel for the Government."
>
> *Ibid.*, 501.

While the answered question contained the words "assessment and collection," nevertheless it conclusively appears from the opinion that the court there held the tax had not been "imposed" upon the interest of Alfred G. Vanderbilt in the residuary estate during the existence of the law.

On page 499 the court say:

> "Further elucidation as to the meaning of the amendatory act of 1901 is unnecessary in view of the subsequent legislation of Congress. By the act of April 12, 1902 (32 Stat., 96, Chap. 500), § 29 of the act of 1898, as amended on March 2, 1901, was repealed to take effect on July 1, 1902. The repealing act, however, saved 'all taxes or duties imposed by section 29 of the act of June 13, 1898, and the amendments thereto prior to the taking effect of this act.'"

As it was held the tax on the interest in the residuary estate was illegally collected and as the opinion points out, the repealing act saved all taxes which were "imposed" prior to the taking effect of the repeal, it follows with mathematical precision, that the court held no taxes had been validly "imposed" upon the interest of Alfred G. Vanderbilt in the residue of his father's estate prior to July 1, 1902.

Had Alfred G. Vanderbilt become 30 years of age on July 2, 1902, the decision of the court would have been the same, viz., his interests in the residuary estate would not have been taxable. The tax would not have been "imposed" thereon because there would

not have existed prior to July 1, 1902, the right of actual possession or enjoyment.

In respect of the income of which Alfred G. Vanderbilt was actually in receipt the situation was just the reverse. Here there was actual possession and enjoyment. The certified question presumed the validity of the taxation of this interest. In other words, it conceded that the tax had been validly "imposed" thereon prior to July 1, 1902. In *United States v. Fidelity Trust Co.*, 222 U. S., 158, it was directly held that a life estate in personal property was properly taxable where the beneficiary was actually in receipt of income while the law was in force.

Mr. Justice Holmes, in speaking for the court, there said:

> "No better example of such an interest could be given then a life estate in a fund, the enjoyment of which actually has begun; none that more clearly and absolutely excludes the qualification 'contingent' in the sense of the law. Vanderbilt v. Eidman, 196 U. S., 480, concerned a life estate in remainder, which, whether the remainder was technically vested or contingent (*Ibid.*, 501, 502), was not vested in possession or enjoyment. It was assumed that the tax was payable in a case like this. *Ibid.*, 488, 495." 222 U. S., 160.

It therefore most clearly appears to have been settled that the liability for the tax under this law depended, as is stated in the opinion in the Vander-

bilt case, "not upon the mere vesting, in a technical sense, of title to the gift, but upon the *actual* possession or enjoyment thereof," during the existence of the law. It is equally clear that this principle is as applicable to income as it is to corpus. There was no tax "imposed" upon either in the absence of actual possession or the immediate right thereto during the period the law was in force.

In the case of *Westhus, et al., v. Union Trust Co.,* 164 Fed., 795, it will be found that there, too, the testator's son was actually in receipt of income prior to July 1, 1902. In speaking of the case of *Vanderbilt v. Eidman,* the court say:

> "The case is only pertinent here in respect of the general acquiescence in the liability to the tax of the bequest of the income to trustees in trust for the son." 164 Fed., 801.

The case of *Hertz v. Woodman,* 218 U. S., 205, upon which appellants strongly rely, arose on a certificate from the United States Circuit Court of Appeals for the Seventh Circuit. The sole question there presented was:

> "Does the fact that the testator dies within one year immediately prior to the taking effect of the repealing act of April 12, 1902 (U. S. Comp. Stat. Supp., 1903, p. 279), relieve from taxation legacies otherwise taxable under sections 29 and 30 of the act of June 13, 1898, as amended by the act of March 2, 1901?"

The court answered the question in the negative.

The form of the question precluded consideration of the refunding act of June 27, 1902 (32 Stat. L., 406, Chap. 1160), and it is not, therefore, mentioned in either the opinion of the court nor in the dissenting opinion.

The words, "otherwise taxable," as contained in the question, clearly comprehended the fulfillment of every condition save that made the basis of the inquiry. In other words, did the date of death become the sole criterion where a legacy or distributive share was *otherwise taxable?* We have endeavored to show that the taxing statute, as construed by this court in the Vanderbilt and Fidelity Trust Company cases, declared "possession or enjoyment" during the existence of the law to be the criterion.

As former Solicitor-General Bowers, who appeared for the Collector in the Hertz case, stated in his brief (p. 10):

> " * * * the fact that the testator or intestate decedent from whom the inheritance passes died within one year before July 1, 1902, is certainly not the test."

At page 39 of his brief Mr. Bowers said:

> "The language of the saving clause of the repealing act and the explicit provisions of the act of June 27, 1902, show that an obligation arose as soon as the legacy or distributive share vested in possession and enjoyment."

In speaking of the Vanderbilt case the court in its opinion in the Hertz case say:

> "For reasons and upon grounds not necessary to be restated it has been also conclusively decided in Vanderbilt v. Eidman, 196 U. S., 480, that the tax or duty does not attach to legacies or distributive shares until the right of succession becomes an absolute right of immediate possession or enjoyment." 218 U. S., 219.

The opinion concludes as follows:

> "The conclusion we reach is, that upon the passing by death of a vested right to the immediate possession or enjoyment of a legacy or distributive share, there was imposed the tax or duty exacted upon every such right of succession, which was saved by the saving clause of the repealing act." *Ibid.*, 224.

The quotations given above from the opinion in the Hertz case are in full harmony with the Vanderbilt case, especially in view of the narrow scope of the certified question. The court below took exactly this view of the Hertz case. In the opinion it is stated:

> "In the case of Hertz v. Woodman (218 U. S., 205), the court, following what was said in the Vanderbilt case, declared that the tax or duty did not attach to legacies or distributive shares until the right of succession became an absolute right of 'immediate possession or enjoyment,' thus repeating the language of the statute in its literal terms." (Rec., 12.)

In the Hertz case the court must have proceeded upon the assumption that the legatees had at least the *right,* during the existence of the law, to the actual possession or enjoyment of their legacies. The certified question precluded any other assumption. It declared the interests were "otherwise taxable" which made the question as to the effect of the death occurring during the period stated, the sole question before the court. In answering a certified question this court decides nothing outside of the terms of the precise inquiry submitted. *United States v. Union Pacific Railway Co.,* 168 U. S., 505, 512.

If the opinion is to be broadly construed as holding that the tax attached at once upon the death of an intestate or a testator (where the will contained absolute bequests) it will place it in direct conflict with the opinions in the Vanderbilt and Fidelity Trust Company cases. It is incredible that this court intended in the Hertz case to overrule the carefully enunciated principles contained in the opinion in the Vanderbilt case. The Fidelity Trust Company case was decided eighteen months after the Hertz case and in the former, as previously shown, the opinion in the Vanderbilt case is quoted with approval. A broad interpretation of the opinion in the Hertz case would also be in conflict with the generally accepted principle that executors and administrators have both title and actual possession of the assets comprising personal estates. This will be adverted to more fully later. We confidently proceed upon the theory that the Vanderbilt case stands unreserved and unmodified.

But brief consideration of the effects of accepting the principles in the Vanderbilt opinion and at the same time of ascribing to the opinion in the Hertz case the meaning that the tax was there "imposed" as of the date of testator's death regardless of the right of possession or enjoyment demonstrates that the court never intended the latter opinion should be so construed.

It would mean while in the cases of all remainder interests the tax was not imposed unless there existed "*actual*" possession prior to July 1, 1902, that nevertheless with bequests of an absolute character and with distributive shares the tax was imposed as of the date of death of the testator or intestate and must be paid although there would be neither possession nor right of possession until long after the repeal of the law. The court in *Knowlton v. Moore* stated: "Taxation is eminently practical" (178 U. S., 82), but even more so is possession of property or the absence thereof. The possession which a next of kin obtains from an administrator in no respect differs from the possession which a remainderman obtains after the termination of the particular estate.

If the opinion in the Hertz case be construed in the manner mentioned it would also put it in conflict with the case of *Clapp v. Mason,* 94 U. S., 589, cited with approval in the case of *Knowlton v. Moore,* see 178 U. S., 55, and also in conflict with the case of *Mason v. Sargent,* 104 U. S., 689, the opinion in which is quoted from with approval in *Knowlton v. Moore,* see 178 U. S., 75. See, also, *Sturges v. United States,*

117 U. S., 363, decided on the authority of *Mason v. Sargent, supra,* and *Wright v. Blakeslee, Collector,* 101 U. S., 174.

Had the taxing statute remained in force as permanent legislation the criterion of possession or enjoyment would, of course, have remained as to all interests and there would have been no discrimination nor injustice. *All* interests would have paid the tax, when, and not before, there existed the immediate right to the actual possession of such interests. Section 30 of the taxing statute required executors, administrators and trustees before distribution to pay the tax. By the amendment of March 2, 1901, the tax was made payable in one year after the death of the testator and it was also provided by this amendment that "Any tax paid under the provisions of section twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged." As pointed out in the opinion in the Vanderbilt case these provisions must all be construed together; it being there held the requirement as to payment within one year was subordinate to that respecting possession or enjoyment.

Indeed, the requirement as to actual possession or enjoyment or right thereto was essential in the practical administration of the law. The rate of tax depended not only upon the degree of relationship of the legatee or next of kin but also upon the extent of the clear value of the legacy or distributive share. The clear value could not be ascertained until debts had been proven within the time allowed by

State laws. In recognition of this fact the official form of Return permitted a reduction from the total value of the personal estate for "Total amount legal debts and expenses to which the personal property is liable." It was not until this was known and deducted that the tax could be assessed upon legacies and distributive shares comprising, as stated in the Return, "Balance, clear value of Personal Estate." In the opinion of the court below it is said:

> "The courts have said that the tax is leviable at the time the rate could be ascertained. The rate of the tax assessable could only be determined after the debts and legitimate incidents of the administration of the estate became known." (Rec., 12.)

Again:

> "When these (claims against the estate) are known and deducted from the whole amount of the assets the distributive share of each distributee can then only be known and the rate of the death duty be fixed. Until that time the "beneficial interest" was necessarily contingent in that sense which relates to the amount of it, and consequently the rate of tax in the present instance was uncertain until the beneficial interest could be paid. If the tax could only be levied at the time the distributees receive, or could rightfully demand possession or enjoyment, it must follow here that these distributive shares were contingent beneficial interests which did not come into possession or enjoyment prior to July 1, 1902." *Id.*, 12.

In the face of all these facts and the holding by this court appellants now contend that the repealing act had the extraordinary effect of changing the criterion of liability for the tax (in all cases save those with remainder interests), from the requirement of actual possession or enjoyment or the right thereto during the existence of the law, to that of the date of the occurrence of the death of the testator, viz., whether prior or subsequent to July 1, 1902.

The effect of such an interpretation is to declare that the law was repealed on July 1, 1902, as to those estates with remainder interests payable after that date but remained in force as to those with absolute bequests or distributive shares payable after that date. In the absence of express language exhibiting a fixed purpose to produce such a grossly unfair and discriminating result every presumption is against the existence of an intention on the part of Congress to do so.

As this court said in the Vanderbilt case in speaking of the two classes of interests the passing of which was subjected to the tax:

> "By any fair construction the limitation as to possession or enjoyment expressed as to one class must be applied to the other, unless it be found that the statute, whilst treating the two as one and the same for the purpose of the imposition of the death duty, has yet subjected them to different rules. A consideration of the subsequent provisions of the section leaves no room for such a contention, * * * ." (196 U. S., 493.)

By the Act of March 2, 1901, Congress amended section 30 by a proviso to the effect that the act should not be held "to apply to any estate where the testator or intestate died before June 13, 1898." Counsel's argument would lead to the conclusion that Congress by the repealing act intended to make liable to the tax the estate of every person who died subsequent to June 13, 1898, and prior to July 1, 1902. The provisions of section 8 of the repealing act and the terms of the refunding act refute any such contention. That this was not the legislative intention is further, and quite conclusively, shown by the changes made in the phraseology of the repealing act when the same was pending in Congress. As passed by the House of Representatives the eighth section of the repealing act provided (italics added):

> "That the tax or duty imposed by section 29 of the act of June thirteenth, eighteen hundred and ninety-eight, above referred to, shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property of *every person who may die before this act shall take effect,*" etc. (Cong. Rec., 57th Cong., 1st Sess., March 21, 1902, pp. 3113, 3114; *Id.*, Feb. 17, pp. 1836, 1837).

If the eighth section of the repealing act had been enacted in the above terms the contentions of counsel might be well justified provided the refunding act had not been passed.

The section as enacted, however, is as follows:

> "That all taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this Act, shall be subject, as to lien, charge, collection, and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows:" (32 Stat. L., 96, 97, Chap. 500.)

The deliberate purpose of Congress not to do, exactly what counsel now insists Congress nevertheless did do, could not be more graphically shown.

The briefest consideration of the real nature of the tax negatives the idea of its imposition as of the date of death. As stated in the opinion in the case of Knowlton v. Moore, *supra,* it is essential that the distinction be kept in mind "between a tax on the interest to which some person succeeds on a death and a tax on the interest which ceased by reason of the death, the two being different objects of taxation." (178 U. S., 77.)

That the taxes provided for by the Act of June 13, 1898, belong to the former class is succinctly stated in the opinion as follows:

> "By elimination, the process of reasoning which we have resorted to in order to demonstrate the unsoundness of the two first contentions as to the meaning of the statute renders it unnecessary to say anything in elaboration of the

> significance of the statute as embodied in the third proposition, which is, that the tax is on the legacies and distributive shares, the rate being primarily determined by the classifications and being progressively increased according to the amount of the legacies or shares. Its correctness is at once apparent when the other views are disposed of." 178 U. S., 77, 78.

In *United States v. Perkins,* 163 U. S., 625, 628, it was held (italics added):

> "Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, *and it is not until it has yielded its contribution to the state that it becomes the property of the legatee."* Quoted with approval in *Knowlton v. Moore,* 178 U. S., 41, 54.

See, also, *"Hanson's Death Duties,"* 6th Edition, page 29, where it is stated in regard to the legacy duty that "It is payable in respect of so much of the personal property of a deceased person as goes into the pockets of his legatees or next of kin."

In reference to the interests, the passing of which is subjected to the tax, it will be observed section 29 of the taxing statute states they are "intended to take effect in possession or enjoyment *after* the death," etc. Not upon the death. Nor should the following significant provision of section 30, being an amendment by the Act of March 2, 1901, be overlooked.

> "Any tax paid under the provisions of sections twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged." (31 Stat. L., 949, Chap. 806.)

Concerning this amendment the court in the Vanderbilt case said:

> "A provision plainly importing a practically contemporaneous right to receive the legacy or distributive share, and one which would be impracticable of execution if the tax was to be assessed and collected before the beneficiary and the rate of tax could certainly be ascertained." 196 U. S., 499.

In other words, the payment of the tax was to be "practically contemporaneous" with the delivery of the legacy or distributive share. Indeed, legacy taxes have always been due and payable at the time of the payment of the legacy or distributive share. This was originally accomplished by causing stamps to be affixed to the receipt given by the legatee or distributee. Such plan was adopted in England by an act passed there in 1780 (20 Geo. III, Chap. 28), and was followed by a similar act in this country in 1797 (1 Stat. L., 527, Chap. 11).

The Treasury Department formerly held the payments were to be contemporaneous under the act of 1898.

> "Legacy tax is not payable until the legacy is payable, and the legacy must not be paid until

the tax shall have been paid." Treasury Decisions, No. 20591, January 19, 1899

It was after the amendatory act of 1901 that the Department placed an erroneous interpretation upon the provisions respecting when the tax was due. This is shown in the opinion in the Vanderbilt case.

It must be remembered that this was an *ad valorem* tax and that an assessment is, therefore, essential.

> "An assessment, when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without an assessment they have no support and are nullities." *Cooley on Taxation,* 3d Ed., Vol. 1, p. 597. See, also, *People v. Weaver,* 100 U. S., 539.

An *ad valorem* tax upon a legacy or distributive share obviously can not be assessed until the amount of the legacy or distributive share is ascertained. And until the time for presentation of claims against an estate has expired and the claims have been investigated it is not even known whether there will be any legacies or distributive shares. The authorized deduction in the official Return from the total personal estate of the "Total amount of legal debts and expenses" to which the estate was liable has been heretofore adverted to.

The opinion in the Vanderbilt case and the four certified questions disclose that this court, as well as

the Circuit Court of Appeals, regarded the "imposition" of the tax as the equivalent of its "assessment." After quoting the refunding act in full, the court in its opinion in that case say:

> "In view of the provision for refunding we see no escape from the conclusion that this statute was in a sense declaratory of what we hold was the true construction of the act of 1898, and which, as we have seen, had prevailed prior to the amendment of March 2, 1901, and which was only departed from by the administrative officer under a misconception of the import of that amendatory act." (196 U. S., 500.)

As shown, the court held since there was no "actual possession or enjoyment" of the residuary estate during the existence of the law the tax was not imposed and that the refunding act was declaratory of the purpose not to tax such interests. Counsel now seeks a ruling that "actual possession or enjoyment" is of no moment, that the date of death is the sole determining factor and that the broad terms of the refunding act are not applicable. We submit we have shown these contentions to be untenable.

> (b) *The distributive shares of this estate were not "absolutely vested in possession or enjoyment" of the distributees prior to July 1, 1902; and hence the taxes collected thereon are refundable.*

In the findings of fact in this case there is the following:

"Upon qualifying as administrator as aforesaid, claimant immediately became entitled to the actual possession of the personal property belonging to the estate of said deceased, and accordingly had actual and exclusive possession thereof, and claimant thus acquired and held title to and exclusive possession of all of said personal property as administrator as aforesaid until the date hereinafter shown, by virtue of the laws of the State of Pennsylvania, which provides as follows:

> 'No administrator shall be compelled to make distribution of the goods of an intestate until one year be fully expired from the granting of the administration of the estate.' (Act. 24th Feb., 1834, Sec. 38, P. L., 80, Purd., 447)." Finding II, Rec., 7.

We repeat the terms of the refunding act:

"That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled, 'An act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may

have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two." (32 Stat. L., 406, Chap. 1160.)

It will be observed this act consists of but two sentences. By the first sentence all taxes "collected upon contingent beneficial interests which shall not have become vested prior to July 1, 1902," are directed to be refunded; by the second, no taxes are to be thereafter collected upon "any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

It has been twice held by this court that the taxes which were by the first sentence directed to be refunded were the same as those which were by the second sentence forbidden to be collected.

Vanderbilt v. Eidman, 196 U. S., 480, 500.
United States v. Fidelity Trust Co., 222 U. S., 158, 159.

As is stated in the opinion in the former case:

"It is, we think, incontrovertible that the taxes which the third section of the act of 1902 directs to be refunded and those which it for-

> bids the collection of in the future are one and the same in their nature. Any other view would destroy the unity of the section and cause its provisions to produce inexplicable conflict. From this it results that the taxes which are directed in the first sentence to be refunded, because they had been wrongfully collected on contingent beneficial interests which had not become *vested* prior to July 1, 1902, were taxes levied on such beneficial interests as had not become *vested in possession or enjoyment* prior to the date named, within the intendment of the subsequent sentence. In other words, the statute provided for the refunding of taxes collected under the circumstances stated and at the same time forbade like collections in the future." (196 U. S., 500.)

It is respectfully submitted that unless an interest upon which a tax was collected was "absolutely vested in possession or enjoyment," it was a "contingent" interest within the meaning of the refunding act.

The refunding act, by its express terms, is applicable to the estates of those dying intestate. The act provides that in "all cases where an * * * administrator * * * shall have paid, or shall hereafter pay, any tax upon any distributive share," etc. It will not do to say that these words are used merely in a descriptive sense and are later qualified by the requirement of contingency. This naturally leads to a point to be presently considered, viz., that the word "contingent" is not used in the refunding act in its technical legal sense. If it were so used the words "administrator" and "distributive share" would be entirely redundant because there could

never be a technically contingent distributive share. It might be said in opposition that Congress in using the word "administrator" in the refunding act, had in mind cases of administration with the will annexed, but the presence of the words "distributive shares" immediately negatives the suggestion. In the taxing statute and amendments it is perfectly apparent that Congress used the word "legacy" as applicable only in cases of testacy and the words "distributive share" as applying exclusively to interests in estates of those dying intestate.

The words of the refunding act, "absolutely vested in possession or enjoyment," mean, we submit, either actual possession or the existence of the immediate right thereto.

> "An estate is 'vested in possession,' when there is a right of present enjoyment. *Smith v. West,* 103 Ill., 332, 337; *Gates v. Seibert,* 57 S. W., 1065, 157 Mo., 254." 8 *Words and Phrases,* 7303.

In *Smith v. West,* 103 Ill., 332, 337, the court quotes from *"Fearne on Remainders,"* p. 2, as follows:

> " 'An estate is vested where there is an *immediate right* of present or future enjoyment. An estate is vested *in possession* where there is a *right* of *present* enjoyment. An estate is vested in *interest* where there is a present *fixed* right of *future* enjoyment. An estate is *contingent* when a *right* of enjoyment is to accrue on an event which is *dubious* and uncertain.' "

In *Lane v. Goudge*, 9 Ves., 225, 229, the Master of the Rolls states (italics added):

> "If a legacy is given, when a person attains 21, and he never attains that age, he never will be entitled. But if it is coupled with other circumstances, showing, that it was not meant conditionally, but only to mark the time, when the interest *vests in possession*, the sense is put upon the words, which the will requires."

The word "enjoyment" in the refunding act apparently has more particular application to income than to principal. It is plain, however, that the words, "absolutely vested in possession or enjoyment," embrace every sort of interest emanating from an estate whether legacy or distributive share, corpus or income.

Next take the words "beneficial interest." Broadly speaking, these words mean any interest in property of any kind. But the refunding act relates only to personal property as it was only this class of property which the taxing statute reached. It is clear at the outset, therefore, that the words "beneficial interest" are not used in the refunding act with broad signification. The words "beneficial interest" are found in the taxing statute in each of the five numbered paragraphs of section 29 (30 Stat. L., 448, 464, 465, Chap. 448; see, also, Statement, herein). It will be observed this section by the first and unnumbered paragraph subjects to the tax the passing of legacies, distributive shares and personal property by deed, grant, etc., to take effect after death. The

reoccurrence of the words "beneficial interest in such property," in each of the five numbered paragraphs of the section shows they are there used as including those interests in "such property," viz., personal property, the passing of which is, by the first and unnumbered paragraph, made subject to the tax, viz., legacies, distributive shares, and property passing by deed, grant, etc., to take effect in possession or enjoyment after death. In the absence of an expression to the contrary the same meaning must be ascribed to the words in the refunding act. It can not be questioned that the acts are *in pari materia.* In the refunding act the taxing statute is expressly mentioned by its title.

> "Both acts are *in pari materia,* and it will be presumed that if the same word be used in both, and a special meaning were given it in the first act, that it was intended it should receive the same interpretation in the latter act, in the absence of anything to show a contrary intention."
> *Reiche v. Smythe,* 13 Wall., 162, 165.

The refunding act makes no mention of the refundment of taxes collected upon the passing of personal property by deed, grant, etc., to take effect after death. Examination of the annual reports of the Commissioner of Internal Revenue indicates there were no taxes collected on account of property so passing. It may fairly be assumed that Congress was aware of this at the time of the enactment of the refunding act in 1902 as the taxing statute had then been in force nearly four years. The refunding act

by its express terms applies only to legacies and distributive shares. It may, therefore, be confidently stated that the words, "beneficial interest," in the refunding act embrace within their meaning interests in both legacies and distributive shares, and only these.

Had it been the intention of Congress, by the refunding act, to direct only the refundment of taxes collected on legacies, the word "legacies" alone would have been used and not the words, "beneficial interest." As in section 29, the words, "legacy or distributive share," appear in the refunding act and, as in the former, are followed by the words, "beneficial interest." Instead of repeating the words, "legacy or distributive share," in the refunding act, Congress used the generic term, "beneficial interest," exactly as had been done five times in section 29 of the taxing statute and, it is respectfully insisted, for identically the same purpose and with the same meaning.

That the word, "contingent," is not used in the refunding act in a strictly legal sense is readily demonstrated. A concise definition of the technical meaning of the words may be found in *"Black's Law Dictionary,"* as follows:

> "This term, when applied to a use, remainder, devise, bequest, or other legal right or interest, implies that no present interest exists, and that whether such interest or right ever will exist depends upon a future uncertain event."

Or, as is stated in *"Words and Phrases,"* 2d Series, Vol. 4, p. 1161, citing *Pingrey v. Rulon,* 246 Ill., 109:

> "A 'contingent remainder' is one limited to take effect either to an uncertain person, or on an uncertain event."

For Congress to have enacted that taxes collected upon such interest should be refunded would have been an idle proceeding because the taxing statute did not reach such interests, and, further, the Treasury Department never collected taxes thereon. Indeed, under the taxing law such contingent interests were not capable of being taxed because the rate of taxation was determined by two factors, viz., the clear value of the interest passing, and the degree of relationship of the testator or intestate to the legatee or next of kin. If either or both of these were unknown obviously the rate of tax could not be determined. Thus technical contingent interests were not taxed because in practically all such cases it would have been a physical impossibility to do so. Aside from this, we have shown this court has held that the liability for taxation depended "not upon the mere vesting in a technical sense of title to the gift, but upon the actual possession or enjoyment thereof." 196 U. S., 493.

The action of the Treasury Department in the taxation only of *vested* interests is perhaps best shown by the reference to, and quotation from, the ruling of the Department contained in the opinion in the Vanderbilt case (italics added):

"The change of construction was made because the administrative officers deemed it was required by the amendment of March 2, 1901, to the act of 1898. 31 Stat. at L., 946, Chap. 806. This is shown by a ruling made by the Commissioner of Internal Revenue on October 17, 1901, in which it was said (Treasury Decisions, Internal Revenue, Vol. 4, p. 209):

> 'This office formerly held that the tax on reversionary interests was payable when the beneficiaries entered into the possession and enjoyment of their legacies.
>
> 'The amendment to § 30 of the war-revenue law, approved March 2, 1901, which went into effect July 1, 1901, necessitated a change in this ruling, and on July 20, 1901, this office ruled that reversionary interests which are *vested* are taxable on their present worth.'" 196 U. S., 497.

It will be noted it was held by the Commissioner that reversionary interests "which are *vested*" are taxable on their present worth.

It seems plain that the word, "contingent," in the refunding act was intended in its ordinary and non-technical sense, viz., uncertain. As Webster says, "Possible or liable, but not certain to occur." Obviously if the interest were "uncertain" it was not then payable. The use of the word as meaning "uncertain" is a common one with laymen and with lawyers. Foster in his recent treatise, "*The Federal Income Tax*," says (p. 113):

> "A dividend is essentially a payment out of surplus earnings over running expenses, and is consequently contingent. It depends upon two elements; first, the receipts of the corporation; and secondly, its necessary disbursements in the conduct of its business."

If the refunding act directs the return of taxes collected upon uncertain or deferred interests by what method of construction can it be worked out that it applies only to cases of testacy? The possession or enjoyment of distributive shares is quite as uncertain as that of any and all legacies. All are liable to be defeated by insolvency. The act, by its express terms, applies to the estates of those dying intestate and it also, by its express terms, applies to the estates of those dying testate. A construction of the refunding act to the effect that it was applicable only to the estates of those dying testate or applicable only to the estates of those dying intestate would subject it to the objection of being discriminatory in character.

The interpretation of the refunding act, in the light of the obviously intended meaning of its essential terms becomes very simple. Instead of being an idle declaration by the Congress, it becomes a living thing. We shall subsequently show the situation which existed at the time of the passage of this remedial act and thus more conclusively demonstrate the results which Congress intended to accomplish by its enactment.

Prior to the rendition of the opinion in the Van-

derbilt case the officials of the Internal Revenue Bureau had construed the taxing statute and the refunding act in a very different manner than that announced in the opinion mentioned. The difference of construction was in relation to vested interests. This is shown by the facts as presented in the Vanderbilt case. As previously noted it was there contended on behalf of the collector that the tax was valid because the interests of the testator's son in the residuary estate was vested, but the court held this was beside the issue; that it would "be doing violence to the statute to construe it as taxing such an interest before the period when possession or enjoyment had attached." (196 U. S., 495.) As we have seen the Internal Revenue Bureau had, subsequent to the enactment of the amendatory act of March 2, 1901, held all vested remainders taxable. This position of the Bureau was adhered to until the rendition of the opinion by this court in the Vanderbilt case. As will be immediately shown, the enactment of the refunding act did not alter the position of the Department in this regard. In other words, to all practical intents and purposes, the Internal Revenue Bureau ignored the refunding act until the Vanderbilt case was decided.

In Treasury Decisions, Internal Revenue, Vol. 5, p. 140, No. 630, dated July 15, 1902, it is held by the Commissioner of Internal Revenue, after setting forth the refunding act:

> "When the decedent died prior to July 1, 1902, and the distributive shares or legacies absolutely

bequeathed were not distributed to or among the beneficiaries on or before the date named on account of the time allowed by State laws to settle the estate and distribute or disburse the personal property, or on account of litigation, such legacies and distributive shares are subject to tax.

When the decedent died prior to July 1, 1902, and the property was left in trust by the will, but had not been turned over to the trustee before July 1, 1902, legacy tax will not accrue.

In case the personalty was turned over to the trustee before that date it is held that said personalty is absolutely vested in possession or enjoyment of the beneficiary within the meaning of the statute."

The facts in the case at bar bring it within the terms of the first quoted paragraph, the Commissioner holding such taxes not refundable. The rulings in the two last quoted paragraphs are directly contrary to what this court subsequently held in the Vanderbilt case.

Counsel for the Government in the Vanderbilt case also insisted the tax was upon the passing from the decedent to the trustee. See brief of Counsel for Government in that case, pp. 11 to 32.

On August 1, 1902, in an opinion by the Attorney-General, when referring to the subject of exemption in the refunding act, he states they were "contingent interests in the technical legal sense." 24 *Op. Atty.-Gen'l,* 98, 100. This, too, is contrary to the holding in the Vanderbilt case.

On November 14, 1902, the Commissioner of Internal Revenue stated:

"It must be held, therefore, that tax attached to every vested interest in personal property in actual value above $10,000, passing under the will of any person who died prior to July 1, 1902, and since June 13, 1898, though the actual possession of that interest, whether by the trustees or beneficiaries, was postponed to July 1, 1902, or later.

The exemption from tax of any 'contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to * * * July 1, 1902,' under the Act of June 27, 1902, in the opinion of the Attorney-General, relates only to 'interests which might never vest' because dependent upon contingencies which might never happen; and the words 'vested in possession or enjoyment' in the third section of the Act of June 27, 1902, simply 'mean that the contingency had been removed prior to July 1, 1902.'" *Treasury Decisions, Internal Revenue*, Vol. 5, p. 193, No. 595.

Again (on October 2, 1903):

"* * * all such interests vested prior to July 1, 1902, are held to be taxable, although not vested in actual possession or enjoyment prior to that date." *Treasury Decisions, Internal Revenue*, Vol. 6, p. 103, No. 706.

The above was not only contrary to the subsequently rendered opinion in the Vanderbilt case but was right in the teeth of the refunding act.

It is unnecessary to multiply instances to show the erroneous attitude of the Internal Revenue Bu-

reau toward the refunding act. Its utter fallacy was completely demonstrated by the opinion of this court in the Vanderbilt case.

The quoted rulings of the Commissioner holding not returnable under the refunding act taxes collected on distributive shares (as in the case at bar), on absolute legacies and on all interests vested prior to July 1, 1902, although no possession or right of possession existed prior to that date, were entirely consistent. The consistency of these rulings is apparent; the unsoundness of the theory upon which they rested has, we submit, been shown.

That distributive shares, as in the instant case, were not taxable under the taxing statute when not capable of being possessed or enjoyed during the existence of the law has been shown to have been held in the Vanderbilt case. We repeat the quotation (italics added):

> "The amendments, therefore, did not, in our opinion, justify the construction that Congress intended by adopting them to cause death duties to become due within one year as to legacies and *distributive shares* which were not capable of being immediately possessed or enjoyed, and were therefore not subject to taxation under the original act." (196 U. S., 498.)

In view of the above in which it is stated that taxes were not due within one year in the case of distributive shares, if such shares were not capable of being possessed or enjoyed during that time, it seems extraordinary that appellants should now con-

tend that such taxes were due in the case at bar, in which the intestate died on June 28, 1902, and the administrator of her estate was not appointed until July 14, 1902. (Rec., pp. 6, 7.) With these facts in the record how is it possible to conceive that the interests of the next of kin in this estate were "absolutely vested in possession or enjoyment" prior to July 1, 1902? And how can it be successfully maintained that on July 1, 1902, the interests of Mrs. Dalzell's two daughters were certain or rather that they were not uncertain? There were then no legal methods of learning whether the estate were solvent or insolvent. Indeed, the possession of the distributive shares might have been defeated by renunciation. It would seem most extraordinary if a statute, which so carefully provided for the measurement of the tax by the "actual value" and "clear value" (used five times in section 29 and twice in section 30 to define the basis of the tax), upon interests to take effect "in possession or enjoyment after the death," could be construed to embrace an estate like that in the instant case when not one of the requisites existed or occurred during the time the law was in force. Such a construction would be rendered even more difficult by the presence of the words in the declaratory and refuding act, "absolutely vested," which clearly qualify the term, "possession or enjoyment."

It will be noted the third certified question in the Vanderbilt case (the only question which the court answered) inquired as to the validity of the tax upon the son's interest in the residue of the estate prior to the time when, if ever, such rights or interests should

become "absolutely vested in possession or enjoyment." These are the identical words used in the refunding act. We have seen that not only did the court answer the question in the negative, but that it saw "no escape from the conclusion that this statute was in a sense declaratory of what we hold was the true construction of the act of 1898." (196 U. S., 500.)

It thus clearly appears that under the terms of both the taxing statute and the refunding act, the interests must have been, during the existence of the former law, "absolutely vested in possession or enjoyment" in order that there be valid taxation and if there were taxation in the absence of such possession or enjoyment there must under the terms of the latter act be a refundment.

The requirement that the interest must be "absolutely" vested in possession or enjoyment is one of very broad effect.

> "The word absolutely is an appropriate expression for the exclusion of the idea that an estate is either partial or conditional."
> 1 *Amer. & E. Enc. L.*, 2d ed., p. 208.

> "An estate without condition or qualification."
> *Rapalje & Lawrence's Law Dictionary.*

> "Absolute property is where a man hath solely and exclusively the right and also the occupation of movable chattels; distinguished from a qualified property, as that of a bailee."
> *Bouvier.*

As we have seen, appellee not only had physical possession of the assets of the estate, but in him was vested the legal title thereto (Rec., 7).

In *Byers v. McAuley,* 149 U. S., 608, 615, Mr. Justice Brewer, speaking for the court, said:

> "An administrator appointed by a State court is an officer of that court; his possession of the decendent's property is a possession taken in obedience to the orders of that court; it is the possession of the court, and it is a possession which can not be disturbed by any other court. Upon this proposition we have direct decisions of this court."

In *Security Trust Co. v. Black River National Bank,* 187 U. S., 211, 229, Judge Hammond's opinion in *Pulliam v. Pulliam* is quoted from with approval. Of this opinion it is there stated:

> "In *Pulliam v. Pulliam,* 10 Fed. Rep., 53, 78, the distinction between ordinary statutes of limitation and statutes of administration of the estates of decendents limiting the time within which creditors must prove their claims, is pointed out in the respect that the latter are rules of property as well as statutes of limitation, * * *."

In *Harrison v. Perea,* 168 U. S., 311, 321, the court say:

> "But on the death of the administratrix the complainant remained the sole surviving admin-

istrator, and in him was vested the exclusive title and the right to the immediate possession of the assets of the estate of the deceased minor."

In *Carroll v. U. S.*, 13 Wall., 151, 153, the court say:

"At the time of the death of the intestate the cotton was in his possession, unaffected by any proceeding in confiscation. After his death, and upon appointment of his widow as administratrix, the title vested in her unforfeited. It was a title upon which she could maintain trespass or trover. And it was the only title to the property subsisting at the time of the capture and sale and payment of the proceeds into the treasury."

In 14 *Cyc.*, 112, it is stated:

"The right to the possession of personal property of an intestate is in the administrator, and not in the heir or next of kin, until after the administration and distribution or after expiration of the time therefor. And the right of possession relates back to the death of the intestate." Numerous authorities cited.

"The right of a legatee or distributee to his legacy or distributive share is suspended until all debts and liabilities of the decedent's estate have been satisfied * * *." 18 Cyc., 597.

See, also, *Goodrich v. Ferris*, 214 U. S., 71, 80, 81.

No one could have compelled appellee to have made distribution to Mrs. Dalzell's daughters prior to July 1, 1902, even had it been physically possible for him to have done so. The laws of Pennsylvania provide:

> "No administrator shall be compelled to make distribution of the goods of an intestate, until one year be fully expired from the granting of the administration of the estate." Act 24th Feb., 1834, Sec. 38, P. L., 80, Purd., 447. (Rec., 7.)

The case of *Farrell v. United States,* 167 Fed. Rep., 639, is directly in point. It, like the case at bar, involved an estate of an intestate and was instituted under the refunding act, and against the United States. Judge Trieber there held (p. 643):

> "From what has been stated hereinbefore, it is clear that, until the time within which claims against the estate of a deceased person may be presented has expired, the interests of the heirs or devisees are purely contingent, and they are neither entitled to the possession nor enjoyment of any part of the estate, and, in fact, may never receive anything from the estate, for the debts proved against it within the time allowed by statute may consume all the personalty of the estate."
>
> * * * * * * *
>
> "After July 1, 1902, under the act of June 27, 1902, no tax was to be assessed or imposed upon or in respect of any contingent beneficial interest which shall not have become absolutely vested in possession or enjoyment prior thereto. On that date none of the distributive shares had vested in

> the plaintiffs, in possession or enjoyment, nor were they entitled thereto. They could maintain no action therefor against the administrator under the laws of the State then in force."

The Farrell case was decided February 20, 1909, prior, therefore, to the decision of this court in *United States v. Fidelity Trust Company,* 222 U. S., 158, decided December 4, 1911, wherein the right to maintain an action under the act of June 27, 1902, more than two years after payment of the tax was recognized. Judge Trieber held in the Farrell case that as the action was not brought within that period it was barred and judgment was entered for the defendants.

It is asserted the Farrell case has been overruled and hence is no longer an authority. If this be true, *Vanderbilt v. Eidman* has also been overruled. In the latter case, as has been shown, this court held "the statute specifically makes the liability for taxation depend, not upon the mere vesting, in a technical sense of title to the gift, but upon the actual possession or enjoyment thereof." That Judge Trieber in the Farrell case wrote an opinion in full accord with the principles enunciated in the Vanderbilt case is at once apparent. There is no occasion here for strained meanings or forced constructions. Actual possession or the immediate right thereto must have existed prior to July 1, 1902, if there was to be valid taxation. No one can deny that this court has so held. Under the broad terms of this declaratory, refunding and remedial act of June 27, 1902, there must be a

refundment of all taxes collected where there was an absence of such actual possession or immediate right thereto prior to the repeal of the law.

The unsoundness of appellants' position is further shown by but a brief examination of the history of the time when the legislation under consideration was enacted.

(c) *An examination of the history of the times discloses a fixed purpose on the part of Congress to prohibit the collection of taxes upon all interests unless the right of absolute possession or enjoyment existed prior to July 1, 1902, and if collected to direct their refundment.*

The history of the times, especially with reference to finances, to which the legislation under consideration pertains, clearly shows the motives which actuated Congress in repealing the taxing statute and in the passage of the refunding act.

> "To ascertain that intent we must look to the condition of the country when the acts were passed as well as to the purpose declared on their face and read all parts of them together." *Winona & St. Peter R. R. Co. vs. Barney,* 113 U. S., 618, 625, quoted with approval by Mr. Justice Brewer when speaking for the court in *Johanson v. Washington,* 190 U. S., 179, 184.

Again:

> "In endeavoring to ascertain what the Congress of 1862 intended, we must, as far as pos-

> sible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances." *Platt v. Union Pacific Railroad Co.,* 99 U. S., 48, 64.

What, then, was the financial condition of the country at the time?

In the spring of 1902 the Spanish War Revenue Law had been in force nearly four years. With its revenue thus greatly increased, the Government had been more than able to meet the heavy expenses incident to the war. The Congress had provided revenue so generously that a six-years' deficit (1894-1899, inclusive) of $283,022,992 was wiped out and turned into a surplus by receipts that in the four years from 1900 to 1903 exceeded expenditures by no less than $302,840,072.

By act of April 12, 1902 (32 Stat. L., 96, 97, Chap. 500), Congress repealed the war-revenue measures, to take effect July 1, 1902. The report of the Ways and Means Committee on the repealing act, entitled, "Repeal of War-Revenue Taxation" (H. Rep., 320, 57th Cong., 1st Sess.), graphically portrays the condition of the country's treasury (p. 2):

> "It is a wonderful condition of our national finances which enables Congress to propose a reduction of $73,000,000 in the annual revenues. History furnishes no parallel to the situation. We had on the first day of the present month in the Treasury an available cash balance of $177,-

632,088.26, and this notwithstanding the fact the Treasury has paid out of this available surplus during the present fiscal year in the purchase of bonds for the sinking fund the sum of $61,196,444.56."

* * * * * * *

"A surplus is a more healthy condition of affairs than a deficit, and no harm results from it so long as there are outstanding bonds to be paid. There is no valid reason why we should continue to accumulate it, however. None of our outstanding bonds are now due. We can only purchase them in the open market. Our credit is so astonishingly good and our bonds in consequence bring so large a premium that it is difficult to purchase them in the market. Sound business judgment dictates a sweeping reduction of our revenues." *Ibid.*, p. 3.

Such evidence is competent.

Binns v. United States, 194 U. S., 486, 495.
Johnson v. Southern Pac. Co., 196 U. S., 1, 19.

It is demonstrated by this report the committee was of opinion that the repealing act as then under consideration would cause a cessation of all inheritance taxes on July 1, 1902.

The purpose of the act of repeal as recommended by the committee is stated in the first sentence of the report, as follows:

"To repeal all the various provisions of an Act entitled 'An Act to provide ways and means

> to meet war expenditures, and for other purposes,' approved June 13, 1898, and of the act amendatory thereto, approved March 2, 1901, which impose any taxes (except upon mixed flour)."

On page 2 of the report it was stated that for the fiscal year which ended with June 30, 1903, there would be "a total relief from war taxes on account of this bill amounting to $73,250,000."

On page 5 of the report it is shown by a table there given that for the six months ending December 31, 1901, the total revenue produced by the act was $34,-152,462.18. *The inheritance tax returns are included and shown in the table,* the amount collected from that source being stated as $2,634,963.74. Therefore, for the entire fiscal year ending June 30, 1902, the total revenue would be twice $34,152,462.18 or $68,304,924.36.

In this respect the report states, on page 1:

> "As we have already seen, the receipts under the amended law for the first six months of the present fiscal year amounted to $34,152,462.18, indicating for the full year $68,304,924.36. It is reasonable, therefore, to expect a gross revenue from the law as it stands today of about $69,000,000 from its internal-revenue features for the present year."

It required another step to reach the aggregate estimate of relief of $73,250,000. There was to be an additional relief from another source than those in-

cluded in the table mentioned of $4,250,000 by means of the repeal of the tax on imports of tea. So as to the twelve months from July 1, 1902, to June 30, 1903, the committee said, page 2:

> "Adding this to the internal-revenue reduction of $69,000,000, we have a total of relief from war taxes on account of this bill amounting to $73,250,000."

Unlike the other taxes, the duty on tea was not to be stopped on July 1, 1902; its collection was to continue until January 1, 1903—that is, during the first six months of the fiscal year for which the relief of $73,250,000 was estimated. And as to the revenue from this source the committee said:

> "This year it will probably amount to $8,500,000. This bill repeals the duty on tea, the repeal to take effect January 1, 1903. We shall therefore receive the revenue from this duty for the first six months of the next fiscal year, and the reduction on this article will be only one-half of the annual revenue, or $4,250,000" (p. 2).

The tax on tea was singled out from the other war taxes for exceptional treatment in the postponement of the effective date of repeal, and the committee thought that the reasons for this exception should be fully stated. Four-fifths of page 2 of the report is devoted to an explanation of this exception. In other words, the report most conclusively shows that the committee believed *all* revenue from the Spanish War

Revenue Law would cease on July 1, 1902, as a result of the repealing act, except the duty on tea, which was continued for six months later, this exception being fully explained in the committee's report. Yet counsel now contend that notwithstanding the absence of any explanation or comment in the rereport, and in spite of statements to the contrary, one of the most prominent and productive of the war taxes was to be continued in force during another twelve months.

Referring further to this report of the Ways and Means Committee, we find it is stated on the second page thereof as follows:

> "In reducing the tax upon tobacco, it seemed necessary and just a year ago, as it does in this bill, to protect those who have stock on hand upon which the tax has been paid from a too sudden operation of the law. A rebate was paid upon the reduction of the tax a year ago, and this bill provides for the payment of a rebate upon the stock of unbroken packages which shall be found in the hands of dealers on the 1st of July, 1902."

The provisions of the Repealing Act in respect of unbroken packages of tobacco to which the committee had reference is as follows:

> "That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff held by manufacturers or dealers on July first, nineteen hundred and two, upon which there has been paid a higher tax than that pro-

> vided for in the preceding section of this act, there shall be allowed a drawback or rebate equal to the full amount of the difference between such higher tax and the tax imposed by this act. * * *" 32 Stat. L., 97, Chap. 500.

By exact analogy with the provisions pertaining to unbroken packages of tobacco and exactly in accordance with identical motives, were the provisions of the refunding act in regard to legacies and distributive shares conceived and enacted. Legacies and distributive shares which on July 1, 1902, were in the possession of executors and administrators, and hence had not "absolutely vested in possession or enjoyment" of the legatees or next of kin, were in "unbroken packages," or not in use. That is what Congress meant in each instance. If not in use during the period of the war taxation, there was to be no tax; and, if a tax had been paid there was to be a drawback, a rebate, or a refundment.

In the opinion in *Binns v. United States, supra,* replies made on the floor of the Senate by the Chairman of a Committee which had had a bill in charge to inquiries, are quoted in the opinion (196 U. S., 495).

In this connection it is pertinent to state that Senator Aldrich, Chairman of the Finance Committee, which had favorably reported the repeal bill to the Senate, responded to certain inquiries from Senators in regard to that bill.

The following appears in the Congressional Record, 57th Congress, First Session, March 21, 1902, on page 3115:

"Mr. Clay: I wish to ask the Senator from Rhode Island a question. As I understand it, this bill repeals all war revenue taxes imposed by the law passed in 1898.

Mr. Aldrich: All of them.

Mr. Clay: Except as to bucket shops?

Mr. Aldrich: That tax was imposed in 1901.

Mr. Clay: I think the Senator from Rhode Island is correct as to that.

Mr. Aldrich: It repeals absolutely all the war-revenue taxes imposed in 1898. It retains only the tax on bucket shops, which was imposed in 1901.

Mr. Bacon: I desire to make an inquiry of the Senator from Rhode Island. I have not had time to read the bill; it is quite a long one; and I wish to ask whether there is any particular provision in the bill as to the time the repeal of these taxes is to take effect?

Mr. Aldrich: The act is to take effect on the 1st of July, 1902, as to everything except the repeal of the duty on tea. The repeal as to that takes effect on the 1st of January, 1903.

Mr. Bacon: That is the only exception?

Mr. Aldrich: That is the only exception. As to the repeal of all the other taxes, the act takes effect on the first of July next."

While the above shown plethoric condition of the public purse still existed, in fact within less than three months after the passage of the act repealing the taxing statute to take effect July 1, 1902, the refunding act of June 27, 1902, was enacted. The act is given in full in the Statement herein. By its first

section, taxes which had been *legally* collected were ordered returned. By the second section taxes which had been illegally collected were made refundable and by the fourth section there was a liberal remission of taxes. Of the third section (the refunding act) the Attorney-General stated:

> "It will be observed that under the provisions of this statute Congress has granted a right of repayment, regardless of any conditions that may have heretofore operated as a bar to such repayment." 26 *Op. Atty.-Genl.*, 194, 197.

Again:

> "Suits brought to recover money due under this act (the refunding act) are not actions for the recovery of taxes, but for money held by the Government in trust for the benefit of the parties to whom it rightfully belongs.
> * * * * * * *
> Whether or not the taxes were originally paid under protest is eliminated, and the question of voluntary or involuntary payment is immaterial." *Ibid.*, 196. See, also, XIII Compt. Dec., 707.

The refundments provided in the several sections are all to be made without regard to any statute of limitations. The whole act is obviously remedial in character and entitled to that construction which will carry out the liberal purpose of Congress at the time of its enactment.

> "* * * it is a remedial statute and one entitled to a liberal construction in order to effect the purpose and object of its enactment."
> *Beley v. Naphtaly,* 169 U. S., 353, 360.

At the time of the enactment of the refunding act the only action theretofore taken by the Commissioner of Internal Revenue contrary to the fixed purpose of Congress to stop all revenue from the inheritance tax law on July 1, 1902, was the ruling of the Commissioner of July 20, 1901, referred to in the ruling of October 17, 1901, and quoted in the opinion in the Vanderbilt case (196 U. S., 497). The rulings mentioned held that "reversionary interests which are *vested* are taxable on their present worth." It was these rulings which the court held in the Vanderbilt case to be erroneous. In this connection it will be noted it is stated in the opinion in the Vanderbilt case:

> "There is no suggestion that any prior practice prevailed in the enforcement of the act of 1898, calling for the enacting of the refunding clause, except the mistaken construction placed on the amendatory act of 1901." 196 U. S., 500.

In harmony with the contentions made herein that the word "contingent" in the refunding act is not there used in its technical legal sense, it will be observed that it was so construed in the Vanderbilt case. The word was there held to include vested interests because, as noted, the erroneous rulings men-

tioned were in regard only to *vested* interests: the department never having even attempted to tax technically contingent interests. Indeed, it may be fairly stated that the word "contingent" was construed in the Vanderbilt case to mean "uncertain," because the court there held it was unnecessary to determine whether the interest of Alfred G. Vanderbilt in the residue of his father's estate was contingent or vested since it was not taxable because of the absence of the right of possession or enjoyment prior to July 1, 1902; hence the possession or enjoyment was deferred or uncertain, and further, it was held that the refunding act was "in a sense declaratory of what we hold was the true construction of the act of 1898, and which, as we have seen, had prevailed prior to the amendment of March 2, 1901, and which was only departed from by the administrative officer under a misconception of the import of that amendatory act." 196 U. S., 500.

It thus appears it has been held where the interest was deferred or uncertain during the existence of the law such interest was not to be taxed or if taxed there must be a refundment under the terms of the declaratory and refunding act of June 27, 1902.

While it is true the erroneous rulings in the Department which Congress wished to remedy by the refunding act involved only remainder interests which, of course, were created by wills, nevertheless it is respectfully insisted that in view of the fixed purpose of Congress to cause a cessation of all inheritance taxes on July 1, 1902, that the intention is

shown by the express terms of the refunding act not only to correct the erroneous ruling mentioned, but further to make it absolutely certain that there would be no tax collected, and if collected it must be refunded, unless the legatee or distributee actually received in possession or enjoyment something of intrinsic value, from which the tax could be deducted, prior to July 1, 1902.

III.

Observations Suggested by Brief for the United States.

It is regrettable that at the very outset of his otherwise interesting brief counsel should make assertions of alleged facts which are entirely outside the record, and for this and other reasons, objectionable. The statement of counsel referred to occurs on pages one and two of his brief and is as follows:

> "It may be termed a 'class' case, in that the internal-revenue collector reports that claims of a like nature against the United States in the approximate sum of $600,000 have been filed in his office, and that in the event appellee's contention prevails not only will the Treasury of the United States be liable for said sum, but claims in cases already adjudicated in the total approximate sum of $1,500,000 may be reopened."

It will be noted the "internal revenue collector reports" (probably Commissioner is meant), etc. We are not advised where the "report" is, nor when and

to whom made. We do know, however, it is not in the record in this case; that no testimony of such obviously immaterial character was even offered, and that hence we have been afforded no opportunity of either objecting to such testimony or of cross-examining any witnesses in regard to these matters. The statement that certain claims of an "approximate" sum "may be reopened," is patently ambiguous.

We do not know what counsel means by the statement nor do we divine his object in making it.

Counsel presents his argument under two heads, neither of which involves the direct issue in this case. His points are "1. What was the thing to be taxed," and "2. At what time did the tax accrue?"

Since the rendition of the exhaustive opinion in the case of *Knowlton v. Moore, supra,* it would seem there could exist no proper grounds for dispute in regard to "What was the thing to be taxed?" Nevertheless, the references of counsel to the quotation from the opinion in that case, on page 10 of his brief, indicate that possibly counsel has not noted the distinction between the taxation of interests which cease by reason of death and the taxation of interests to which some person succeeds as a result of death. The distinction between the two is pointed out by Hanson and most carefully explained in the opinion. Under this point counsel states in regard to the interests of Mrs. Dalzell's two daughters that they were not contingent beneficial interests "but, on the contrary, were subject to the tax, having vested prior to July 1, 1902." As heretofore shown, this is identically the position which counsel's predecessor

took before this court in the Vanderbilt case, and it is exactly what the court held in that case to be entirely erroneous.

The second point, as noted is, "At what time did the tax accrue?" The issue involved in this case is: Are the moneys paid by appellee as inheritance taxes refundable under the refunding act of June 27, 1902? Counsel argues that the tax accrued at the moment of death and evidently regards the accrual of the tax and its imposition as identical. As heretofore pointed out in this brief, it has been determined directly in the Vanderbilt case that the tax, in respect of reversionary interests, was not "imposed" until the right of actual possession existed, and that the court there stated the same was true with respect of "distributive shares which were not capable of being immediately possessed or enjoyed" (196 U. S., 498).

Again referring to the word "accrue" and counsel's contention that the tax accrued upon the date of death, attention is invited to a provision of section 30 of the taxing statute as quoted in the Statement herein, in which this word appears twice. In making provision for the preparation by executors, administrators and trustees of a schedule or list of legacies and distributive shares, which schedule or list is to be filed with the collector, it is required that it shall contain a statement of "the amount of duty which has *accrued*, or shall *accrue* thereon." As such schedule or list need not be filed with the collector until either distribution was about to be made or one year "after the death of the testator," whichever hap-

pened first, it will be readily seen that Congress contemplated that this tax upon the passing of "Legacies and Distributive Shares of Personal Property," did not "accrue" at the time of death, but subsequent thereto. In this connection it is of interest to note that the second sentence of the refunding act provides that "no tax shall hereafter be assessed or imposed," etc. It is obvious that Congress regarded the imposition of the tax as something to be done by an administrative officer and that it was not automatically imposed by the law on the date of death.

The case of *Beer v. Moffatt,* 109 Fed., 779, from the opinion of which counsel quotes on pages 11 and 12 of his brief, is in line with his contentions. The court there erroneously stated the question for decision to be "Did the legacies vest before July 1, 1902?" (p. 781). We have already shown the holding of this court in the Vanderbilt case that the statute "makes the liability for taxation depend, not upon the mere vesting in a technical sense of title to the gift, but upon the actual possession or enjoyment thereof." 196 U. S., 493.

We feel the other points mentioned in counsel's brief are fully covered by the argument already made in this brief.

IV. Conclusion.

While the primary object of Congress in the passage of the refunding act may have been to direct a refundment of all taxes on reversionary interests not

actually in possession or enjoyment prior to July 1, 1902, nevertheless, it clearly expressed the intention therein that there should, under that act, be refundments of all taxes collected on uncertain or deferred interests which the legatees or next of kin did not receive nor have the right to receive into actual possession or enjoyment before the date named. The discrimination resulting from any other interpretation is certainly to be avoided if possible. That Congress intended there should be no inheritance taxes collected subsequent to July 1, 1902, has, we submit, been clearly shown. Congress had evidently learned there was a possibility that under departmental rulings its purpose in this regard might not have been fully accomplished. This is adverted to in the opinion in the Vanderbilt case. (196 U. S., 500.) By the passage of the refunding act, expressly mentioning both legacies and distributive shares and using therein the broad term, "any beneficial interest," which embraced them both, it is clear that Congress thus reaffirmed this fixed purpose.

We have shown the condition of the national finances, the motives and objects of Congress and the express command of the statute, all of which, we submit, conclusively demonstrates the intention of Congress to have refundments made in such cases as that at bar.

It is respectfully submitted that the judgment of the court below should be affirmed.

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